

LEHOTSKY KELLER COHN LLP  
200 Massachusetts Ave. NW  
Washington, DC 20001  
Jonathan F. Cohn  
jon@lkcfirm.com

September 13, 2024

VIA ECF

The Honorable Kenneth M. Karas  
United States District Court for the Southern District of New York  
300 Quarropas Street, Chambers 533  
White Plains, NY 10601

**RE: *Newman v. Bayer Corporation*, No. 7:22-cv-7087-KMK-AEK  
Defendants' Motion for Leave to File Under Seal**

Dear Judge Karas,

I represent Defendants Bayer Corporation and Bayer Healthcare in the above referenced matter. I write pursuant to Your Honor's Individual Rules, specifically Rule IX.A., to request an Order permitting Defendants to redact the following, viewable only by Selected Parties:

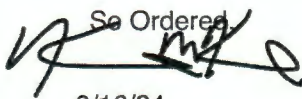
1. Portions of Defendants' Brief in Opposition to Class Certification and portions of Exhibit D containing excerpts from the Deposition of Amanda McCarthy, Defendants' 30(b)(6) witness. The redacted portions of Defendants' Brief and Exhibit D reveal Defendants' confidential pricing information, confidential information on product development, or confidential research on consumer behavior, thus discussing "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G); *see also Playtex Prods., LLC v. Munchkin, Inc.*, No. 14-cv-1308 (RJS), 2016 WL 1276450, at \*11 (S.D.N.Y. Mar. 29, 2016) (authorizing sealing of "highly proprietary material" where a party's "privacy interests and the likely harm they may suffer if [it] is revealed to their competitors outweigh the presumption of public access"); *see also Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998) (finding "defendants would suffer irreparable harm" should their "[c]onfidential business information dating back even a decade or more" be disclosed publicly, because it "may provide

valuable insights into a company's current business practices that a competitor would seek to exploit").

2. Portions of Defendants' Brief referring to certain segments of Plaintiff's Exhibits 8 and 11 to the Declaration of Max S. Roberts and portions of Exhibit K to Defendants' Brief referring to certain segments of Exhibit 11 to the Declaration of Max S. Roberts. This Court has already granted that Exhibits 8 and 11 be filed under seal. ECF 77. These documents are internal consumer surveys commissioned by Defendants and containing confidential business information and evaluations of consumer feedback. The portions of Defendants' Brief and Exhibit K that discuss these exhibits are entitled to protection from public disclosure as material containing "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). *See Playtex Prods.*, 2016 WL 1276450, at \*11 (authorizing sealing of "highly proprietary material" where a party's "privacy interests and the likely harm they may suffer if [it] is revealed to their competitors outweigh the presumption of public access"); *see also Encyclopedia Brown*, 26 F. Supp. 2d at 614 (finding "defendants would suffer irreparable harm" should their "[c]onfidential business information dating back even a decade or more" be disclosed publicly, because it "may provide valuable insights into a company's current business practices that a competitor would seek to exploit"). Disclosure of the proposed redacted portions of any of these documents would cause competitive harm to Defendants. *See Playtex Prods.*, WL 1276450, at \*11; *see also Encyclopedia Brown*, 26 F. Supp. 2d at 614. Defendant requests respectfully that the Court grant this request to seal pursuant to Federal Rule of Civil Procedure 26(c)(1)(G).

3. Portions of Exhibit H containing Defendants' Counsel's home address.

In accordance with Your Honor's Individual Rule IX.A, Defendants will contemporaneously file: (1) a public version of these documents with redactions and (2) a sealed copy of the unredacted documents with proposed redactions highlighted.

So Ordered  
  
 9/16/24

Respectfully submitted,

/s/ Jonathan F. Cohn

Jonathan F. Cohn  
 Lead Counsel for Defendants

cc: All Counsel of Record